

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ERIC LOUIS-JEAN, <u>et al.</u>	:	CIVIL ACTION
	:	
v.	:	NO. 05-5088
	:	
G. MICHAEL GREEN, individually and	:	
in his official capacity as District Attorney	:	
of Delaware County, <u>et al.</u>	:	

MEMORANDUM AND ORDER

Kauffman, J.

May 19, 2006

Plaintiffs Eric Louis-Jean ("Eric"), Yvonne Louis-Jean ("Yvonne"), Melissa Louis-Jean ("Melissa"), and Michael Louis-Jean ("Michael") (collectively "Plaintiffs") bring this civil rights action against Defendants G. Michael Green ("Green"), District Attorney of Delaware County, both in his individual and official capacities, Michael J. Chitwood ("Chitwood") in his capacity as Superintendent of Police for the Township of Upper Darby, the Upper Darby Police Officers bearing badge numbers 35, 54, 67, 71, 86, 94, 112, 129, and 621 (collectively "the Police Officers"), and Joanne Somers ("Somers"). The Complaint alleges violations of 42 U.S.C. § 1985 ("§ 1985") (count one) by all Defendants and violations of 42 U.S.C. § 1986 ("§ 1986") (count two) and 42 U.S.C. § 1983 ("§ 1983") (count three) by Green, Chitwood and the Police Officers. The Complaint also asserts claims for Abuse of Civil Process (count four), Assault and Battery (count five), and Intentional Infliction of Emotional Distress (count six) against Somers. Now before the Court is Green's Motion to Dismiss. For the reasons that follow the Motion will be granted in part and denied in part.

I. BACKGROUND

The relevant facts, as alleged in the Complaint, are as follows. Eric and Yvonne are husband and wife. They immigrated to the United States from Haiti and have become United States citizens. Melissa and Michael are their minor children. Complaint ¶ 4, 5.

On or about May 15, 2003, Eric and Yvonne purchased and moved into their home at

4688 State Road, Drexel Hill, Pennsylvania. At that time, they were one of the few non-Caucasian families in the neighborhood. The gravamen of Plaintiffs' Complaint is that since moving in, they have faced a campaign of racially motivated intimidation aimed at persuading them to leave the neighborhood. The central figure in this campaign is Defendant Somers, Plaintiffs' next-door neighbor. However, according to the Complaint, the local police and District Attorney's Office have deliberately neglected their duty to protect Plaintiffs. Complaint ¶ 16.

The conflict between Somers and Plaintiffs began on January 4, 2004, when Somers telephoned the police to file a complaint about Plaintiffs. Somers' and Plaintiffs' houses share a driveway, and Somers falsely represented to the police that Plaintiffs had parked their car in such a way as to block her access to her garage. Complaint ¶ 17(a). A number of other instances of intimidation followed thereafter. Complaint ¶ 17.

Plaintiffs appealed to the Upper Darby Police for protection on a number of occasions. However, the police response never went beyond interviewing the parties and filing an incident report. Complaint ¶¶ 24-30.

Plaintiffs also sought protection from Somers through the judicial process, where they were thwarted by what they allege to be the discriminatory conduct of Defendant Green. On or about September 19, 2004, Plaintiffs attempted to file a private criminal complaint against Somers. The complaint described all the instances of intimidation as of that date. Plaintiffs attached copies of the police Incident Reports, photographs of vandalism, and a narrative statement by Plaintiffs. Complaint ¶ 35. However, before Plaintiffs' criminal complaint could be heard on the merits, it had to be approved by Green or one of his appointees. Complaint ¶ 31. Plaintiffs' criminal complaint was reviewed by Assistant District Attorney Joseph Lesniak. On September 22, 2004, he disapproved it on the grounds that it lacked "prosecutorial merit." Complaint ¶ 36. On April 28, 2005, Plaintiffs attempted to file a second private criminal complaint against Somers. Lesniak disapproved this second complaint as well. Complaint ¶ 44.

On June 1, 2005, Plaintiffs requested to meet with Green regarding the disapproval of

their criminal complaints. Green's secretary advised them that he would review the matter and contact them for a meeting at a later date. Complaint ¶ 47. He failed to do so. Complaint ¶ 48. Plaintiffs continued to attempt to arrange a meeting with Green, but Green, without explanation, refused to see them. Complaint ¶¶ 49-51.

In contrast, Somers had more success in filing her criminal complaint against Plaintiffs. Green or one of his assistants approved it and as a result, Somers' complaint was referred to the Center for Resolutions for a mediation conference. Complaint ¶¶ 32-51.

Plaintiffs filed this action, which names Green both in his individual and official capacities, on September 23, 2005. Green has moved to dismiss all claims against him pursuant to Fed. R. Civ. P. 12(b)(6).

II. LEGAL STANDARD

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelaastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

III. ANALYSIS

A. Individual Capacity Claims

Green moves to dismiss the claims against him in his individual capacity on the grounds that he is entitled to absolute immunity. It is now well-established that prosecutors enjoy absolute immunity from liability under the civil rights statutes in certain circumstances. See Imbler v. Pachtman, 424 U.S. 409 (1976). In determining whether absolute immunity applies, courts "engage in a 'functional analysis' of each alleged activity" – that is, they examine the prosecutor's conduct in order to determine the nature of the prosecutorial function involved.

Kulwicki v. Dawson, 969 F.2d 1454, 1463 (3d Cir. 1992). “Activities [that] were intimately associated with the judicial phase of the criminal process” receive absolute immunity. Imbler, 424 U.S. at 30. However, “a prosecutor acting in an investigative or administrative capacity is protected only by qualified immunity.” Kulwicki, 969 F.2d at 1463.

The conduct allegedly giving rise to liability here is Green’s decision not to approve Plaintiffs’ two private criminal complaints. Plaintiffs seek to characterize this decision as administrative in nature and therefore not entitled to absolute immunity. The caselaw, however, is to the contrary. When a prosecutor reviews a private criminal complaint, he or she makes a determination whether the matter merits prosecution. Such a decision “is at the core of a prosecutor’s judicial role. A prosecutor is absolutely immune when making this decision, even where he acts without a good faith belief that any wrongdoing has occurred.” Id. at 1463-64. (internal citations omitted). Thus, the decision not to approve the criminal complaints enjoys absolute immunity. Id. (“Consideration of personal motives is directly at odds with the Supreme Court’s simple functional analysis of prosecutorial immunity.”); see also Foster v. Pennsylvania Human Relations Comm’n, 2005 WL 2891368, at *2 (3d Cir. Nov. 3, 2005) (holding that state attorney general was entitled to prosecutorial immunity for his decision not to prosecute plaintiff’s former employer for alleged civil rights violations) (not precedential). Plaintiffs’ claims against Green in his individual capacity will therefore be dismissed.

B. Official Capacity Claims

Plaintiffs’ action against Green in his official capacity is the functional equivalent of a suit against the District Attorney’s Office and must be treated as such. See Kentucky v. Graham, 473 U.S. 159, 166 (1985) (“As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.”). Accordingly, Plaintiffs’ official capacity suit is subject to all the limitations that would apply to a suit against the Delaware County District Attorney’s Office.¹

¹ Green’s prosecutorial immunity is not a factor in the official capacity claims. Kentucky v. Graham, 473 U.S. 159, 167 (1985) (“In an official-capacity action, [the defense of

The limitation which Green cites in his motion is that a municipal entity, such as a District Attorney's Office, may not be held liable under the civil rights statutes for constitutional violations committed by its employees under the doctrine of respondeat superior. Bd. of County Commissioners of Bryan County, Oklahoma v. Brown, 520 U.S. 397, 403 (1997) ("We have consistently refused to hold municipalities liable under a theory of respondeat superior."); Reitz v. County of Bucks, 125 F.3d 139, 144 (3d Cir. 1997) (applying the bar against § 1983 suits based on respondeat superior to a Pennsylvania District Attorney's Office). Rather, "it is only when the execution of the government's policy or custom ... inflicts the injury that the municipality may be held liable under § 1983." City of Canton, Ohio v. Harris, 489 U.S. 378, 385 (1989) (quoting Springfield v. Kibbe, 480 U.S. 257, 267 (1987)) (emphasis added). Thus, the "first inquiry in any case alleging municipal liability under § 1983 is the question whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation." City of Canton, 489 U.S. at 385. A plaintiff can establish a municipal policy or practice in three ways:

First, the municipality will be liable if its employee acted pursuant to a formal government policy or a standard operating procedure long accepted within the government entity; second, liability will attach when the individual has policy making authority rendering his or her behavior an act of official government policy; third, the municipality will be liable if an official with authority has ratified the unconstitutional actions of a subordinate, rendering such behavior official for liability purposes.

McGreevy v. Stroup, 413 F.3d 359, 367 (3d Cir. 2005).

Both the second and third situations apply here. As the District Attorney, Green's authority is such that his decisions and acts constitute the official policy of the office. See 71 P.S. § 732-206(a) (defining district attorneys as the "chief law enforcement officer[s] for the

prosecutorial immunity is] unavailable. The only imunities that can be claimed in an official-capacity action are forms of sovereign immunity that the entity, *qua* entity, may possess, such as the Eleventh Amendment."). Green has not raised the defense of sovereign immunity. See Carter v. City of Philadelphia, 181 F.3d 339, 347 (3d Cir. 1999) ("Eleventh Amendment immunity is an affirmative defense and the burden is thus on the DA's office to establish its immunity from suit.").

county in which [they were] elected.”). It follows that the Delaware County District Attorney’s Office could be held liable under the civil rights statutes for any of Green’s official acts or directives. The question thus becomes whether any such acts were the cause of the injuries Plaintiffs have alleged. When read in the light most favorable to Plaintiffs, the Complaint alleges that Green caused Plaintiffs’ criminal complaints not to be approved. See Complaint ¶¶ 36, 45, and 61. He also refused to meet with them regarding the allegedly racially-motivated intimidation they were suffering. See Complaint ¶¶ 47-51. In short, the Complaint alleges that Plaintiffs’ injuries were the result of what was effectively official office policy. Plaintiffs’ official capacity claims therefore do not rely on the principle of respondeat superior, and Green’s motion to dismiss them will be denied.

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ORDER

AND NOW, this 19th day of May, 2006, upon consideration of Green's Motion to Dismiss (docket no. 9) and Plaintiffs' opposition thereto, it is **ORDERED** that the Motion is **GRANTED IN PART** and **DENIED IN PART** for the reasons stated in the accompanying Memorandum. Accordingly, Plaintiffs' claims against Green in his individual capacity are **DISMISSED**.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.